

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 16, 2007

CALL TO PODIUM:**RESPONSIBLE STAFF:**

Patricia Patula, Planner

AGENDA ITEM:

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District Commission
x	Consent Item
	Ordinance
	Resolution
	Policy Discussion
	Work Session Discussion Item
	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:**HISTORIC DISTRICT COMMISSION**

Resolution Authorizing the Staff Liaison to the HDC to Sign the Written Decision of the HDC Vote on HAWP-37E, Request for Demolition of the Historic Talbott House (Hair Bar) at 309 North Frederick Avenue, as Being Reflective of the Findings and Vote Taken on January 2, 2007

SUPPORTING BACKGROUND:

On January 2, 2007, the HDC held its policy discussion on HAWP-37E, a request to demolish 309 North Frederick Avenue, the Talbott House, which was designated a local historic site on June 5, 1989 (HD-17). At the conclusion of the discussion, a motion was made and seconded to grant HAWP-37E. The vote, however, resulted in a 3-3 tie. Therefore, the motion died.

The attached decision reflects the findings made by the HDC during the policy discussion in support of both the votes in favor of and against the motion. The attached Resolution authorizes the Staff Liaison to the HDC, Patricia Patula, to sign the decision as being reflective of the findings and vote taken by the HDC on January 2, 2007.

Attachments:
Resolution
Decision

DESIRED OUTCOME:

Vote on the Resolution.

CITY OF GAITHERSBURG
31 South Summit Avenue

DECISION OF THE HISTORIC DISTRICT COMMISSION
OF JANUARY 2, 2007 REGARDING HAWP-37E,
A REQUEST TO DEMOLISH 309 NORTH FREDERICK AVENUE,
KNOWN AS THE HISTORIC TALBOTT HOUSE,
LOCATED IN THE C-D (CORRIDOR DEVELOPMENT) ZONE,
GAITHERSBURG, MARYLAND

HAWP-37E

OPINION

This proceeding constitutes an action pursuant to §24-225 of the Zoning Ordinance (Chapter 24 of the Gaithersburg City Code) which permits the Historic District Commission to review and approve historic area work permit requests consistent with the procedures as provided in §24-228.1 and §24.228.2 of the City Code.

The subject property, Lot 84, a resubdivision of Lots 23 and 24, is located at 309 North Frederick Avenue, Gaithersburg, Maryland, in the CD (Corridor Development) Zone.

Operative Facts

History

On June 2, 2003, the Historic District Commission (HDC) approved a resolution granting a prior application to demolish the subject property, under HAWP-37C. That grant followed a unanimous recommendation of the Historic Preservation Advisory Committee (HPAC) to deny the HAWP request.

Under Section 24-228.1(f) of the City Zoning Ordinance, unless another time frame is stated in a Certificate of Approval, work under a historic area work permit must be completed within one year from issuance of the Certificate. The original approval for HAWP-37C was silent as to the time frame required for completion of the work. By vote of the HDC at its October 20, 2003 meeting, that approval was amended to allow for a two (2) year time frame for completion, requiring completion of work by June 2, 2005. Having failed to commence or complete the work in the two year time frame, the applicant sought a one year extension of the HAWP in accordance with Section 24-228.1(f). The applicant did not complete the work by the expiration of the extension. Therefore, HAWP-37C expired on June 2, 2006. HAWP-37E was a request for a new HAWP to demolish the Talbott House, albeit on essentially the same facts and evidence as submitted under HAWP-37C.

HPAC

The HPAC held a public hearing on HAWP-37E on July 6, 2006, continued August 3, 2006. During the course of the hearing, counsel for the applicant requested that the entire record from HAWP-37C be incorporated into the record of HAWP-37E. Following the public hearing, the HPAC unanimously voted to recommend denial of HAWP-37E on

August 3, 2006. The HPAC recommendation was based on detailed findings, set forth as follows.

The HPAC found that the applicant did not provide evidence sufficient to meet his burden of proof by showing that retention of the historic house creates a substantial financial hardship for the applicant. The financial information presented was incomplete and lacked sufficient detail to make a conclusive case that if any hardship does exist, that it exists solely because of the requirement to retain the historic house on the designated property. The partial information presented did demonstrate that a profitable business had been in operation throughout the applicant's ownership of the site and that this business remains in operation as a profitable business. Although the applicant claimed that additional financial information exists that would support this claim of substantial hardship, including, but not limited to, the relationship between Hamza Halici and Halici, Inc., he refused to disclose that information because of his desire for financial privacy. The information the applicant was willing to provide was not sufficient to prove the applicant's claim.

There was no evidence presented or otherwise provided that differentiated this historic resource from other historic resources, or similarly situated properties, for which reasonable uses have been found. Additionally, there was no evidence submitted to show unique aspects to this historic resource that might create a unique burden for the applicant.

The applicant had substantial time to improve his economic status by finding a buyer or new tenant without the restriction of retaining the historic house during the period in which the previously approved demolition permit, HAWP-37C (expired), was in effect. However, the applicant, by his own testimony, admitted that he did not make any more progress in advancing his economic status during that period than during the period prior to the issuance of the demolition permit in which preservation of the historic house was required under the historic designation.

Additionally, the retention of the historic structure will not be a deterrent to a major improvement program of substantial benefit to the public because its retention benefits the public as part of the implementation of the Frederick Avenue Corridor Plan, which reflects public policy in favor of supporting the preservation of historic resources where possible and appropriate . The plan calls for retaining this historic site and encourages adaptive reuse of the historic house.

Finally, the HPAC found that retention of the house will not adversely affect the best interests of the citizens of the community. Instead, public testimony entered into the record by a number of citizens supports preservation of the historic house as crucial to the historic resource described in the designation documents.

HDC

The HDC received the recommendation from HPAC, including the record before HPAC upon which the recommendation was based, at its meeting on September 5, 2006. Although the code allows the HDC to make a determination based upon the HPAC's recommendation (§24-228.1(c)), at its first policy discussion on HAWP-37E the HDC determined that it would hold its own public hearing, also authorized by §24-228.1(c). A public hearing before the HDC was held on October 9, 2006.

Planner Patula provided background on the previous grant of HAWP-37C, and the current application. She also explained that the HPAC unanimously voted to recommend denial based on the finding that the applicant did not meet his burden of proof for economic hardship.

Rebecca Willens, Miles & Stockbridge, representing the applicant, briefly summarized the record for the HDC. She stated that over the past several years, the applicant brought forth plans for the property that would integrate the existing structure in with a new development plan which included restaurant, retail, and office uses, but because of the expense of integrating, the necessity of bringing the structure up to current City Code standards, and the lack of adequate storage for reuse, none came to fruition. She referred to a 2002 memorandum prepared by Senior Plans Examiner Lee describing the various Code standards applicable to adaptive reuses of the building. Ms. Willens reviewed the cost to renovate the defects in the structure and stated that the experts retained by the applicant estimated that the improvements to facilitate office or retail use would exceed \$97,000. The cost for renovating the structure for expansion and commercial or change in use ranged from \$150,000 to \$550,000. Ms. Willens stated that the applicant has taken the position that it is not reasonable to require the applicant to spend upwards of \$250,000 minimum without the guarantee of a return. She further stated that the value of the property with the current structure is \$630,000, and to bring the structure up to City Code for suitable use other than its current use, far exceeds the value it can bring to the property owner. She further stated that from September 2005 until February 2006, there were substantial efforts made to market the property and the condition of the structure is key in the failure to find a tenant or buyer. She reminded the HDC that the City Code does not permit more than one extension of a historic area work permit. Ms. Willens asked that if the demolition permit is granted, that a two-year initial period be given for the approval of the permit and to allow the applicant time to work with consultants. She submitted a petition for the record in support of the demolition.

Stephen Orens, Miles & Stockbridge, addressed a question regarding the applicant's initial request for a conditional historic designation of the property (HD-17) to find an adaptive reuse. He stated that when the application was made, it was conditioned on the ability to develop the property for commercial use. Mr. Orens stated that at that time, former City Attorney Abrams advised the Commission that they could not designate a site conditionally. The owner decided to proceed with the historic designation. In support of his client's application, Mr. Orens referred to the evidence in the record and asserted that, under the City's Code, the Broadview Apartments case, and Maryland law, restorations would place an undue and inappropriate burden on the owner. Based on the evidence submitted, Mr. Orens asked the HDC to approve the demolition and allow the applicant to come back with a plan under the zoning of the Master Plan.

Peter Moholt, 19636 Gallatin Court, Montgomery Village, stated he appraised the property and structure in May 9, 2006 and determined that the highest and best use was to demolish the building because of the net return on the land over a period of time. He stated that the existing building depreciates the value of the land as demonstrated in his report. He estimated the value of the property if vacant would be \$37.50 per square foot or \$900,000. He also estimated the value of the improvements to be \$630,000. He stated that the estimate was based on comparable sales at that time and that the land value would

be higher today.

Brian Sheehan, Real Estate Broker, GMB Associates, assisted with marketing the property for the past year. He stated several financial institutions, primarily banks, questioned whether the existing structure could be demolished for other uses. Following submittal of letters of intent, those interested opted out. In response to questions regarding the rental rate for the building, Mr. Sheehan stated that there are not many rental uses for the existing structure; however, if rented, the maximum rent would be \$20 - \$30 per square feet for the 900 square feet of usable structure and half-acre parcel.

Comments from the public included the following:

Elizabeth Johnson, 104 Chestnut Street, representing Montgomery Preservation, Inc., summarized the e-mail sent to the HDC where they opposed approval of the demolition and questioned relying on outdated information from previous years and urged the HDC to review the new record submitted. Mrs. Johnson strongly expressed support for the findings of the HPAC.

Cathy Drzyzgula, 16 Walker Avenue, Vice Chair of the HPAC, summarized HPAC's recommendation. She referred to Article 24-228.2 and the three circumstances under which an historic structure may be demolished. She stated that the applicant is running a profitable business and reasonable uses have been found. She further stated that the HPAC found no evidence submitted by the applicant to support the claim of economic hardship.

Richard Arkin, 121 Selby Street, stated that the applicant submitted an analysis that was defective. He stated that the property was zoned commercial at the time of purchase and the applicant himself, submitted the application for historic designation. He further stated that the applicant has benefited from tax credits and urged the HDC to deny demolition.

Peter Winant, 18 Montgomery Avenue, expressed concern that the argument has been about money and questioned what benefits would be given to the community if the demolition is granted for the historic designated structure.

Warren Johnson, 104 Chestnut Street, stated that similar properties have been successful. He stated that based on what the applicant has submitted for evidence, it does not demonstrate financial hardship.

Bernie LaFrance, 105 Chestnut Street, expressed opposition for demolition of the historic designated structure and the financial hardship claims submitted.

Bob Drzyzgula, 16 Walker Avenue, asked the HDC to deny the demolition application and expressed support for the HPAC's findings for the second time. He stated that the applicant has not submitted evidence to support the financial hardship. He referred to successful renovations of other historic structures in the community. He reiterated and asked that the HDC consider the benefits the applicant has received from past tax credits and what he could receive from future credits, if the structure is renovated.

The HDC's record closed November 8, 2006. The HDC conducted its policy discussion on January 2, 2007. The motion to grant HAWP-37E resulted in a 3-3 vote, and therefore the motion died.

Relevant Statutory Provisions

The following statutory provisions from the City Zoning Ordinance (Chapter 24 of the City Code) are among the provisions which define the nature of the Historic District Commission's review powers for historic area work permit applications in the City of Gaithersburg:

Sec. 24-226. Powers and duties of historic district commission.

The historic district commission shall have those powers, duties and authority assigned to it by Article 66B, MD. CODE ANN, the zoning ordinance of the City of Gaithersburg, and those acts or enactments of the city council of the City of Gaithersburg.

* * *

Sec. 24-228.1 Historic area work permit; application procedures

* * *

(c) *Review and public meeting.* The historic preservation advisory committee shall schedule and conduct a public meeting on the application, giving notice pursuant to subsection (d) below....The committee...shall thereafter promptly forward their written recommendations to the historic district commission. The historic district commission may render its decision based upon these recommendations or public comment received before the committee, or in its discretion, hold a public hearing.....

* * *

Sec. 24-228.2. Historic area work permits; criteria for decision

(a) The historic district commission, in evaluating an application for a historic area work permit, shall consider and render its decision based on the following factors:

- (1) The preservation of the historic, archaeological, or architectural significance of the site or structure and its relationship to the historic, archaeological or architectural significance of the surrounding area;
- (2) Guidelines for rehabilitation and new construction design for designated sites, structures, and districts adopted by resolution of the historic district commission, including criteria for construction, alteration, reconstruction, moving and demolition which are consistent with the Secretary of the Interior's Standards for Rehabilitation.
- (3) The relationship of the exterior architectural features of the structure to the

remainder of the structure and surrounding area;

- (4) The general compatibility of the exterior design, scale, proportion, arrangement, texture and materials proposed to be used; and
- (5) Any other factors, including aesthetic factors, which the commission deems pertinent.
- (6) Notwithstanding anything to the contrary contained in subsection (c) of this section the commission may approve a historic area work permit if the structure is a deterrent to a major improvement program of substantial benefit to the public or its retention would either cause substantial financial hardship to the owner or its retention would not be in the best interests of the citizens in the community.

Findings

On the motion to grant approval of HAWP-37E, three members of the Historic District Commission voted against the motion, while three members voted in favor.

The three members voting against the motion did so based primarily on the record before and recommendation from HPAC, and made the following findings:

1. That the HPAC is an accomplished group of people charged with overseeing all historic properties in Gaithersburg. The HPAC spent a tremendous amount of time on this application and recommended denial, finding that the burden of proof for substantial financial hardship had not been met.

2. The findings of HPAC, detailed herein above, made a compelling case for the denial of the permit based on a finding that the applicant had not met his burden of demonstrating substantial financial hardship. For example, the applicant presented incomplete and insufficient financial information to support the claim of substantial financial hardship. What evidence was presented demonstrated that a profitable business had been in operation throughout the applicant's ownership of the property which continues to operate profitably. There was also no evidence to indicate that this property was different from other historic resources for which reasonable uses have been found. Additionally, there was evidence that whatever hardship does exist was not related to retention of the house; the applicant had a permit to demolish the house for the past three years but failed to find a buyer or a tenant within that time, which would have improved his economic status. The record before HPAC thus supported the recommendation of denial.

3. The record showed that additions could be built onto the existing building, creating viable and reasonable opportunities for the site.

4. Based on a review of the HPAC and HDC records, including the public hearing and testimony, there was no compelling evidence to support the applicant's claim of substantial economic hardship.

The three members voting in favor of the motion to grant the permit did so based on the following findings:

1. That the evidence indicated that the applicant could not make a reasonable return on his investment if he was required to expend the funds necessary to bring the building up to code for any other use.

2. Pursuant to §24-228.2(d) of the Historic Preservation Ordinance for the City, the standard to evaluate this request is whether retention of the structure would cause “substantial financial hardship to the owner,” rather than the more burdensome “undue financial hardship” standard. The test of substantial financial hardship in the City’s Historic Preservation Ordinance thus establishes a very low burden for an applicant.

3. There was substantial evidence in the record before the HPAC and HDC to support the applicant’s position that retention of the historic Talbott House, at 309 North Frederick Avenue is causing substantial financial hardship to the owner. Based upon the evidence of record, including the extensive evidence, review and findings by HPAC, and the evidence incorporated into the record from HAWP-37C on the request by the applicant’s attorneys during the HPAC public hearing, the members of the HDC voting in favor of the motion to grant the permit found that the applicant met his burden of proof (Broadview Apartment Co. v. Commission for Historical and Architectural Preservation, 49 Md.App. 538, 433 A.2d 1214 (Md.App. 1981)). The evidence indicates that the subject house is relatively small and, after considering problems with access and fire separation requirements, there is limited space currently available for use. The record contains cost estimates which indicate that expenditures between \$175,000 and \$400,000 would be required to bring this building up to code for any use other than the current use for full utilization in comparison to the probable reasonable economic return. These costs are persuasive evidence of a substantial financial hardship.

4. Finally, there was insufficient evidence in the record to support a different determination than was in the record when the first historic area work permit (HAWP-37C) seeking demolition was granted in 2003.

Conclusion

Upon consideration of all the evidence pertaining to HAWP-37E contained in the records before the HPAC and the HDC, on January 2, 2007, three members of the Historic District Commission voted in favor of the motion to grant HAWP-37E and three members voted against. As a result of the tie vote, the motion failed, in accordance with the Rules of Procedure of the HDC and Roberts’ Rules of Order.

SIGNED by the Staff Liaison to the Historic District Commission of the City of Gaithersburg, pursuant to authorization of the Historic District Commission in R- -07, the 16th of January, 2007, effective the day of Historic District Commission vote on the 2nd day of January, 2007.

Patricia Patula
Staff Liaison to the Historic District Commission

RESOLUTION NO. _____

RESOLUTION OF THE HISTORIC DISTRICT COMMISSION OF THE CITY OF
GAITHERSBURG ("HDC") AUTHORIZING THE STAFF LIAISON TO THE HDC TO
SIGN THE DECISION OF THE HDC ON HAWP-37E AS BEING REFLECTIVE OF
THE FINDINGS AND VOTE OF THE HDC TAKEN JANUARY 2, 2007

WHEREAS, the Historic District Commission for the City of Gaithersburg ("HDC") held a policy discussion on January 2, 2007 on HAWP-37E, a request to demolish the historic Talbott House (Hair Bar) at 309 North Frederick Avenue; and

WHEREAS, based on the findings and record of the Historic Preservation Advisory Committee ("HPAC") and the record before the HDC, the HDC's motion to grant approval of HAWP-37E died as a result of a tie vote, three (3) members voting in favor and three (3) members voting against; and

WHEREAS, the votes both for and against the motion were supported by evidence contained in the records of HPAC and the HDC; and

WHEREAS, the Staff Liaison to the HDC has documented the findings of the HDC members based on those records in support of the votes both for and against; and

WHEREAS, the decision containing those findings prepared by the Staff Liaison are an accurate reflection of the findings and votes taken by the HDC.

NOW, THEREFORE, BE IT RESOLVED by the Historic District Commission of the City of Gaithersburg, that the Staff Liaison to the HDC is hereby authorized to sign the written decision reflecting the findings and vote taken by the HDC on January 2, 2007 on HAWP-37E.

ADOPTED by the Historic District Commission this 16th day of January, 2007.

SIDNEY A. KATZ, CHAIRMAN
Historic District Commission

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the Historic District
Commission in public meeting assembled on the
16th day of January, 2007.

David B. Humpton, City Manager